

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

November 10, 2005

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on November 10, 2005 at the Law Offices of Stutman, Treister & Glatt, P.C., Los Angeles, California. The following members attended the meeting in person (at Stutman Treister & Glatt), at a satellite site at Wendel Rosen Black & Dean in Oakland, California or by phone:

Molly Baier
Douglas Boven
Christopher Celentino
Sharon Dutton
Ellen Friedman
Justin Harris
Eve Karasik
Howard Kollitz
Douglas Kraft
David Meadows
Malhar Pagay
Donna Parkinson

Paul Pascuzzi
Mark Porter
Maria Pum
Ed Tredinnick
Colin Wied
Craig Wolfe

Russell Clementson (Ex Officio)
Rob Harris (Ex-Comm Liaison)
Sandy Lavigna (Ex Officio member)

The following members did not attend the meeting with advance notice: Andrew Alper, Elizabeth Berke-Dreyfuss, Lisa Fenning (Committee Advisor), Barry Glaser, Michael Koch, Rhonda Nelson, Dan Schechter, William Sias and Mary Jo Wiggins. Gary M. Kaplan also attended the meeting as a visitor.

The Chair called the meeting to order at approximately 10:05 a.m., and noted the presence of a quorum.

1. Approval of October 21, 2005 Minutes.

The Minutes of the October 21, 2005 meeting were approved as presented.

2. Administrative Matters.

a. Roster Accuracy. The Chair indicated that he will keep this item on the agenda so that any changes of address or corrections can be made on a timely basis. Ellen Friedman's address has changed. This will be reflected on the Matrix.

b. Budget—The deadline for submission of the Final Budget for 2005-2006 was October 21, 2005 not November 30, 2005. The Chair was able to circulate the Final Budget and obtain sufficient votes to submit it on a timely basis to the State Bar. There are two remaining issues in connection with the budget: 1) Whether ILC may use one of the California Bankruptcy

Forum meeting rooms at no cost or for some cost for the May ILC Membership Recruitment Reception at the CBF annual conference or whether it will be cost effective to reserve a suite for the reception; and 2) Whether there is a cost to ILC for a web seminar, teleseminar or e-survey. Rob Harris indicated that there is no cost to ILC for these activities. The Bar has a provider for web seminars and teleseminars and will pay the cost.

c. Bar Profiles set up. The Chair stated that all members of the Committee should have set up or updated their profiles on the State Bar website. If members are unsure about whether they have a profile or whether it is current, they can e-mail the Chair. Susan Orloff will ask that this issue remain on the agenda for each meeting in order to guaranty the e-distribution lists remain current. The Chair also noted that when members set up a profile, they can also choose to receive distributions from other Standing Committees and Sections of the Bar.

3. Website and Constituency Subcommittee Report.

a. Web Updates. Eve Karasik reported that the Subcommittee met on Tuesday, November 8, 2005 and assigned different pages to the members of the Subcommittee. Each member will take responsibility for his or her page, for example, contacting the Legislative Subcommittee to obtain accurate, current information to post on the website, posting the dates for the next ILC meeting and creating a link to purchase the Annual Meeting Family Law program. She reported that the website has out of date articles and information. The Subcommittee will propose archiving materials that remain useful but are not current to prevent the site from acquiring a “stale” look. Mark Porter asked about a link to the e-Bulletins that have been distributed. Eve reported that they are not on the website yet but agreed that putting them on the website under “recent cases” would be helpful. Craig Wolfe raised the point that navigating to the ILC website from the State Bar home page is difficult and whether it would be possible to streamline it. Dave Meadows agreed stating that he was only able to locate the ILC home page but was not aware of the links on that page. Eve explained the links on the page but agreed that it is difficult to navigate from the Bar’s main page to the ILC website. David Meadows pointed out that it might be an issue of educating members and that he was successful in locating the website by referring to Insolvency Committee on Google. Rob Harris stated that he had not heard of members of other sections of the Bar having difficulty navigating to their section’s home page but he suggested discussing the issue with Susan Orloff to see if she has a suggestion.

b. E-Bulletins. The Chair stated that the Committee sent four recent e-Bulletins to the constituency. The Chair thanked Dan Schecter for his article published as an e-Bulletin, and explained that Dan writes articles for Westlaw, which allows the Committee to use the articles. The Committee waits until Westlaw has published the article before issuing it as an e-Bulletin. The Chair commented that the Committee has tried to weed out the numerous new case bulletins and stick to Ninth Circuit bankruptcy law and California insolvency questions. The Chair encouraged all members to continue looking for new cases or court decisions and developments pertaining to local rules and to send him or Mark Porter any potential information that they discover for an e-Bulletin. Some members stated they were not receiving e-Bulletins. The Chair urged them to check their profiles on the State Bar website as the addresses on the e-mail lists are taken from those profiles. If the contact address in the profile is correct, the members should

check with their own technology consultant to see if the e-Bulletins are being deleted or blocked as spam or some other problem exists.

c. Solicitation for Constituency List from list of Attendees of CBF Annual Conference. The Chair indicated that Eve Karasik and Doug Boven are working on the template for soliciting new members for the constituency list from the California Bankruptcy Forum Attendees' List.

4. Legislative Subcommittee.

a. BLS Standing Committee Guidelines for Legislation. The Chair indicated he attempted to schedule Neil Wertlieb, from Ex-Comm, to attend the last ILC meeting to provide information to the Committee on the affirmative legislative proposal (“**ALP**”) process. However, Mr. Wertlieb was unavailable. The Chair spoke with Mr. Wertlieb and obtained November 30, 2005 early afternoon as an available date for a 15 to 30 minute briefing via teleconference. The Chair will send a reminder and notify members of the exact details by e-mail. The call-in number will be the same as the call in number for ILC meetings. Mr. Wertlieb will provide a background briefing for the ALP process, and take questions. The Chair encouraged everyone who can to participate in the call so Committee members will understand the process and we can stay ahead of the deadlines relating to ALP's.

b. Erroneous Bankruptcy Code References in California Law. Bill Sias was not present so the Chair passed this item. The Chair reported that Bill Sias is continuing to create the list of all the California Codes he has identified with erroneous references to the Bankruptcy Code. When the list is completed, the Committee will determine whether an ALP to correct the erroneous references makes sense.

c. Fairness in Bankruptcy Litigation Act of 2005 (re venue). Lisa Fenning was not present. The Chair reported that she indicated that nothing new is expected to happen until January, 2006. Molly Baier reported that Lisa Fenning stated that it is too early to contact anyone in connection with the Comment prepared on behalf of ILC. Mark Porter suggested that it may be longer than January 2006 before there is action on this proposed legislation because Lisa's earlier estimate related to expected Judiciary Committee hearings on the current Supreme Court nominee, which are now slated to start in January.

d. S. 256 (BAPCPA).

(i) Central District of Ad Hoc Committee. Barry Glaser was not present at the meeting. He sent the Chair an e-mail stating that there is nothing to report at this time on the Central District Ad Hoc Committee.

(ii) Interim Rules and Forms. Mary Jo Wiggins was not able to attend the meeting. The Chair pointed out her report at page 33 of the meeting materials. There will be a conference call on November 16, 2005 at 1:30 p.m. using the ILC meeting call-in number. The Chair invited anyone interested in the Interim Rules and Forms comment project to participate. The Chair indicated he had contacted Neil Wertlieb regarding approval for the comments that ILC might prepare pertaining to the Rules and Forms. The Chair indicated that Ex-Comm will give deference to the substantive aspects of this project as it reflects well on the Business Section

and its constituency. It should, however, be coordinated with other Standing Committees such as Financial Institutions and Sections, such as Litigation. Rob Harris offered to contact someone from the Litigation Section. The Chair suggested that as to timing of completion of the project, that the Special Rules Task Force work backward from the August 6, 2006 due date. In order to have an impact, the any comments will need to be submitted in advance, and will need to be reviewed and approved by Ex-Comm. Rob Harris reported that Ex-Comm meeting dates are posted on the website but there is a meeting on Friday November 18, 2005. The Chair will report the timing issues to Mary Jo Wiggins. She is a former member of the Special Rules Committee, so she may also be able to assist with scheduling deadlines.

(iii) Bankruptcy Cleanup Legislation. David Meadows had nothing to report on the rumors of proposed clean up legislation related to BAPCPA. There is no action expected on this legislation until next year.

(iv) Identity Theft Legislation. David Meadows reported that this legislation has to do with data bases and identity theft and concluded it is not related to bankruptcy laws. He addressed one concern with accumulation of financial information via software and links to credit counseling agencies. That data is likely covered by the legislation but probably outside the Committee's area of responsibility. Doug Boven asked what the legislation was designed to do. David Meadows reported that it requires businesses to take reasonable steps in the context of their business to protect data and gives individuals the right to one free credit report per year. It identifies responsible officers and as a matter of public policy, if an entity becomes aware of a breach, the entity is required to notify the affected parties. The bill also appoints an ombudsman for privacy issues. There was some concern among Committee members that the legislation might impact a section 363 sale of a business with customer lists. Counsel may have to monitor the requirements of the law to the extent it impacts such sales. Rob Harris thought the bill might have an impact on consumer credit counseling agencies, gathering information and forwarding it to credit reporting agencies. David Meadows agreed to look at the amendments to the bankruptcy code to see if there is any other impact of the bill.

e. California Law Revision Commission. The Chair indicated that we will keep monitoring the Commission's agenda and that the Legislative Subcommittee should generally be kept abreast of CLRC projects.

(i) Mechanics' Lien Provision. The Chair indicated that the Committee is continuing to monitor this project from the prior year, and that no action is expected until early next year when the CLRC is expected to issue a report.

(ii) Assignments for the Benefit of Creditors. Mark Porter spoke to David Gould of McDermott, Will & Emory about a report he was appointed by the CLRC to produce concerning California's assignment for the benefit of creditors mechanism. David had previously conducted a survey and background research and reported to Mark that he was nearly finished with a report to the CLRC. Then the report was held up until Sherwood Partners v. Lycos case was finally decided. Mark offered the Committee's assistance but David declined.

f. CCP § 697.530, Judgment Liens Against Foreign Corporations and Secret Liens. Mark Porter spoke Paul Barks at the UCC Committee about the issue of restoring a judgment

creditor's ability to obtain a judgment lien against the assets of a foreign corporation doing business in California through recordation of the judgment with the California Secretary of State. The UCC Committee attempted to pick a new Subcommittee chair to work on this issue and the secret lien issue and got no volunteers. Mark Porter suggested the best way to proceed, in light of efforts over time to engage the UCC Committee on this point, would be for the ILC Committee to submit something to the UCC Committee for consideration. The Chair indicated that he tried for a year to obtain responses from the UCC Committee on other issues previously without success. Mark Porter thought that rather than create a full ALP, a simple two-page memo should be created indicating what the ILC Committee is considering in connection with this issue. If the UCC Committee agrees after reviewing the memo, the Committee can prepare an ALP. The Chair asked for volunteers and Ellen Friedman and Mark Porter agreed to work with the Chair on the issue. David Meadows indicated that the Legislative Subcommittee has not yet met and prioritized which issues it wants to address this year. The Chair agreed to circulate the secret lien materials to the volunteers so a memo can be prepared to submit to the UCC Committee. Doug Kraft also agreed to work on the memo.

g. Model Real Estate Sale Order. The Chair sent the Model Real Estate Sale Order on October 27, 2005 to the Ex-Comm to approve and is waiting for the response. Rob Harris indicated it should not take long to receive a response.

h. CCP § 580(d) Protection on Refinancing. Barry Glaser was unable to attend the meeting. He sent an e-mail to Rob Harris that he intended to set up a conference call with the volunteers from the last meeting. Rob indicated they're still trying to decide how far anti-deficiency protection of the California statute should extend: only to refinancing of the first mortgage; refinancing of a second purchase money mortgage or further. Donna Parkinson suggested that the Subcommittee coordinate with the Financial Institutions Committee. There was also a suggestion that the Committee contact Dan Schecter, who has offered law students to research issues in the past, and ask if one of his students might do background research into the legislative history and the law in this area, so that the Committee will have background from which to prepare an ALP, should it decide to do so. The Committee discussed whether the solution to the problem should be addressed at the federal or state level and the consensus was it should be addressed at the state level since California is one of the few states with anti-deficiency legislation. Rob Harris also noted that the Bar's ability to lobby Congress successfully, having no paid lobbyists in Washington, is very limited. Mark Porter suggested that the Subcommittee coordinate with the Real Estate Committee. Molly Baier also asked to be kept apprised of developments this issue.

i. Lis Pendens. The Chair indicated that he received word from Dan Schecter that he wants to pursue legislation on this issue. Dan was concerned that we consult other Committees who might have an interest or opposition before putting a lot of work into the project. The Chair suggested a two-page memo to the Real Estate and Legislation Committees before the ILC Committee spends time drafting an ALP.

j. Other State and Federal Legislation. The Chair asked David Meadows whether any other state or federal legislation had come to the attention of the Subcommittee. David reported that it had not.

5. Education Subcommittee.

a. Winter SEI (January 27–29). Donna Parkinson reported that the Committee is set for the program that Rob Harris and Barry Glaser are presenting entitled “The New Bankruptcy Act – What General Practitioners Should Know.” Barry, Rob, Chris Celentino and Michael Cavan were to be the panelists, but Chris now has a conflict and cannot participate. Colin Wied has agreed to appear in place of Chris. Meeting materials were timely submitted.

b. Annual Meeting of the State Bar. Donna Parkinson reported that the following potential topics are being considered for the Annual Meeting of the State Bar:

- Chapter 13 / Choosing a Chapter (Michael Koch);
- Health Care Bankruptcy (William Sias and Barry Glaser);
- Mechanics’ Liens (Chris Celentino and Maria Pum with Mike Buckley, former Committee member).

Mark Porter suggested that the Subcommittee meet before the next ILC meeting to address the topics.

c. Seminars and Webinars. Rob Harris reported that the Subcommittee should contact Susan Orloff for setting up webinars. There is no charge to the Committee. Mark Porter and Sandy Lavignia discussed whether a teleseminar on securities issues in bankruptcy would be appropriate. After noting the fact that general topics are typically chosen for the Winter SEI and the Annual Meeting, and also considering the degree to which securities issues arose in the past in practices of the Committee members, the Committee concluded that the topic may be too narrow even for a teleseminar. The Committee agreed with Mark and Sandy’s suggestion that the topic might make sense as part of a longer program on corporate securities matters, perhaps a joint program with the Corporations Committee. The Chair reported that he received an email forwarded by Peter Bronson from the ADR Committee regarding a joint program with the Committee. Colin Weid suggested that mediation was not being fully utilized, and in particular might be used more in resolution of main-case disputes. Other Committee members from the Eastern, Northern and Central districts reported that the local dispute resolution programs are being used and producing good results. After further discussion regarding free dispute resolution programs versus paid mediators, the Chair asked for a vote on whether the ILC should pursue a joint program with the ADR Committee. There was no interest in a joint program on this topic at this time.

6. Publications Subcommittee.

The Chair congratulated Colin Weid on his summary of publications. Colin reported that there are three ways that the Committee can submit publications: 1) ad hoc articles in the Business Law News; 2) taking over an issue of BLN with 6 to 8 articles centered around a common bankruptcy theme; and 3) a “how to” manual.

Regarding number 2, there was a consensus that there should be an issue devoted to post bankruptcy law changes when some time has passed.

Regarding number 3, Colin described the chapter 11 manual he wrote in 1991-94 and suggested it could be brought up to date. The State Bar will publish this type of manual, and Susan Orloff was enthusiastic in an e-mail response to an inquiry about this type of manual. The Committee agreed that this manual is a good idea that will be valuable for practitioners. Colin agreed to circulate the manual to the Committee. The following people volunteered to work on this project: Russ Clementson, Doug Boven, Gary Kaplan, Eve Karasik, Howard Kollitz, Donna Parkinson, Paul Pascuzzi, Mark Porter and Ed Tredinnick. Rob Harris suggested that the Subcommittee address copyright issues also.

Colin Weid also has an article for the BLN on family law that he will circulate to the Committee. The Chair raised a question about waiting to put the article in BLN until after the Annual Meeting program on the same topic in order not to compete with the Annual Meeting.

Howard Kollitz is doing an article on the changes in the bankruptcy law related to landlord tenant relationships.

7. Update from Ex-Comm Liaison.

Rob Harris indicated that the Ex-Comm is focusing on the Winter SEI and planning the officer retreat to make it bigger and better to train officers. The things he will report are 1) 4 e-Bulletins sent by the ILC Committee; 2) the Committee plans to take over an issue of BLN regarding post bankruptcy law change issues; 3) the Committee is moving forward with a how to manual on chapter 11; and 4) Programs are in place for the Winter SEI and the Annual Meeting.

8. New Business.

There was a discussion of Lisa Fennings e-mail regarding a report in Norton's Bankruptcy Law Advisor recommending recording of bankruptcy petitions in the real property records to cut off potential BFP's. The Chair thought this should be the subject of an e-Bulletin and agreed to circulate it. The Chair also reported that he was contacted by someone from the Office of Media and Information Services at the State Bar, seeking assistance with review of foreign language translations of a booklet entitled "What Can I do if I Can't Pay My Debts." The Chair stated he would circulate the booklet to everyone for comments and changes.

Adjournment.

The meeting then adjourned at approximately 11:57 a.m.

► **The next meeting of the Committee will be December 9, 2005, at Parkinson Phinney, 400 Capitol Mall, Suite 2540, Sacramento, California 95814, phone: 916.449.1441 and the host-coordinator is Donna Parkinson.**



Donna Parkinson, Secretary of the Meeting